a "right to remain in office" by authorizing suspensions, even without pay, in limited circumstances, with no process at all.

None of the cases cited by Respondent as being consistent with the decision below (Opp. at 18-21) addresses the question whether state court actions constitute adequate post-termination process. Nor do any require a post-termination remedy that includes reinstatement, as the Seventh Circuit does, nor do they find that state court proceedings are not sufficiently prompt. Rather, these cases address a myriad of *other* procedural due process concerns: student expulsions (*e.g., Camlin v. Beecher Community School School*, 339 Ill.App.3d 1013, 791 N.E.2d 127 (3rd Dist. 2003)); administrative review boards (*see Case v. Shelby County Civil Service Merit Board*, 98 S.W.3d 167 (Tenn. Ct. App. 2002)); the proper notice to be given in a pre-termination proceeding (*Calhoun*[4] *v. Gaines*, 982 F.2d 1470 (10th Cir. 1992)); the standards for judging pre-termination hearings where *no* post-termination process is available (*Copelin-Brown v. New Mexico State Personnel Office*, 399 F.3d 1248 (10th Cir. 2005); *McClure v. Independent School District No. 16*, 228 F.3d 1205 (10th Cir. 2000)); and the inadequacy of a meeting with the agency head as post-termination process (*Garraghty v. Commonwealth of Virginia*, 52 F.3d 1274 (4th Cir. 1995)).

Thus, while Respondent argues that the appellate court's decision is "consistent with the overwhelming weight of federal and state authority interpreting *Loudermill*," (Opp. at 18), the cases he cites do not support that claim. To the contrary, the Seventh Circuit's decision conflicts with the well-settled principles established in *Loudermill* and twenty years of appellate decisions applying those principles.

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[4] Miscited in Respondent's Opposition as *California* [sic] *v. Gaines*. (Opp. at 19).

D. The Denial of Qualified Immunity Violates This Court's Requirement of a "Clearly Established" Constitutional Violation.

Respondent fails to address the argument regarding qualified immunity in any meaningful way, neglecting to cite any of this Court's most significant qualified immunity decisions, from *Harlow v. Fitzgerald,* 457 U.S. 800 (1982), and *Anderson v. Creighton,* 483 U.S. 635 (1987), to such recent cases as *Saucier v. Katz,* 533 U.S. 194 (2001), and *Brousseau v. Haugen,* 125 S.Ct. 596 (2004). More important than his failure to cite these cases, Respondent never acknowledges their requirements. Indeed, like the opinion below, Respondent argues that, although *Loudermill* and its progeny required that some post-termination process be provided, and no case had ever held that the post-termination process available – a full trial in state court – failed to meet the requirements of *Loudermill*, these defendants nonetheless should have been able to foretell the Seventh Circuit's decision. This directly contravenes *Saucier*.

Both Respondent and the appellate court have made it plain that they dislike these school board members, and believe that their behavior was, as Respondent repeated numerous times, "petty and maladroit." That, however, is not now, and never has been the standard for a denial of qualified immunity for local public officials. The court below, as did the District Court before it, found that these defendants had not acted with bias, and made no finding that they were acting in any way with subjective bad faith, although the Respondent seems to argue that point in his brief. In any event, this Court long ago rejected the subjective bad faith standard that Respondent now appears to advocate as his only explanation for the denial of qualified immunity. *Harlow*, 457 U.S. at 815-818. Simply disliking the defendants, and disagreeing with their decision to

terminate a superintendent they found to be wholly unsuited for his position, is no basis for denying the immunity to which they are entitled. Accordingly, in addition to the grounds for hearing this case on its merits, this Court should grant certiorari to resolve the confusion caused by the opinion below regarding the standards for denying qualified immunity to local public officials.

CONCLUSION

In urging this Court to deny the petition for certiorari, Respondent argues that doing so will "help make sure that employment disputes will be resolved in state court where they belong." (Opp. at 24). Petitioners share the sentiment that these cases belong in state court. Only by granting the petition and reversing the Seventh Circuit, however, will this Court ensure that result. For the reasons stated above, and in the petition for certiorari, the Board of Education and its individual board members respectfully request that this Court grant the petition for certiorari.

Respectfully submitted,

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